IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WP No. 3020 of 2007

Between :

T C S Jammiched6,
Gadwal Mandal, Mahabubnagaqr District
Rep. By its President G.Raman Goud .. Petitioner

And

The Commissioner of Prohibition and Excise,
Andhra Pradesh at Hyderabad and 2 others .. Respondents

Dated : 27th September 2007

JUDGMENT :

The petitioner is a Toddy Tappers Cooperative Society at Jammiched village, Gadwal Mandal of Mahabub Nagar District. The Prohibition and Excise Superintendent, Gadwal through his orders dated 3.1.2006 cancelled the licence of the petitioner society, which was valid upto 31st March, 2007. The cancellation order is based upon the findings reached by the Prohibition and Excise Inspector, SHO, Gadwal, holding that one Gundraj Raman Goud S/o Narsappa Goud was found selling adulterated toddy at the licenced premises and therefore the licence deserves to be cancelled.

The case of the petitioner is that the society has never engaged

the aforesaid Raman Goud in any capacity to undertake sale of toddy and that the society has not been informed of the clandestine activity carried out by Raman Goud and that for extraneous reasons the society and its President have been needlessly implicated in the alleged sale of adulterated toddy and that the toddy was not at all sold at the licenced premises by the said Raman Goud. Not satisfied with this explanation, the licence was cancelled by the Prohibition and Excise Superintendent on 3.1.2006, the appeal preferred thereon to the Deputy Commissioner of Prohibition and Excise, Mahabubnagar Division had also failed. Thereafter, a 2nd appeal was carried to the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad. He negatived the contention canvassed on behalf of the petitioner society, that at the time of inspection/check and drawing the panchanama, the toddy itself was not sold at the licenced premises, by relying upon the circumstance of Gundraj Raman Goud producing a copy of the licence bearing No.41, dated 28.1.2002 issued in favour of the writ petitioner society. Similarly, it is also found that the inspecting officials have verified boundaries of the society with the place where the alleged adulterated toddy was sold at the time of check and inspection and they were found to be tallied. However, the learned counsel for the petitioners Sri N.Sreedhar Reddy would contend that during enquiry, when the Prohibition and Excise Inspector examined the witnesses who have affixed their thumb impressions on the panchanama, they have clearly disowned the statements attributed to them. Therefore, he would contend that the panchanama which forms the entire basis for the action is the one which has been prepared

unilaterally by the departmental officials and when once the panch witnesses have disowned the statements attributed to them, no penal action should have been initiated against the petitioner society. Importantly, Sri Sridhar Reddy, would contend that strangely the officer who had undertaken the inspection and available at the time when the panchanama was prepared recording the sale of adulterated toddy, has not been examined during the course of enquiry undertaken by the Inspector of Prohibition and Excise. Thus the petitioner society had been denied an effective opportunity to establish its defence. If only the said officer is made available for cross-examination, he could have ascertained from him as to the details of the premises at which the adulterated toddy was found being sold by the said Raman Goud. Thus, the failure to provide him sufficient opportunity amounts to denying him a fair and reasonable opportunity forming part of the principles of natural justice and therefore orders passed all through against him are liable to be declared as vitiated.

Per contra, the learned Government Pleader for Prohibition and Excise would contend that the writ petitioner had more than fair and reasonable opportunity to establish his defence. He had failed to convincingly explain as to how a person who is unconnected with the writ petitioner society could resort to sale of toddy in and around the licenced premises without any knowledge attributable to the petitioner cooperative society or its President. Therefore, the learned Government Pleader would contend that the explanation now sought to be offered was a clear after thought for purposes of getting out of a tight spot. The learned Government Pleader would also

contend that the period of licence of the writ petitioner society had expired as of 31st March, 2007 and that a new policy regulating the grant of licence to sell toddy had been put in place by the State and in fact these rules have been published through G.O. Ms.No.1228, Revenue (Ex.II), 9th September, 2007 which are also Gazetted on 20.9.2007 bringing them into force at once. Henceforth referred to as "2007 Rules". It is also provided therein that the earlier set of rules would stand repealed by the latest rules and will seize to be operative with effect from 1.10.2007. The learned Government Pleader would therefore urge that it is for the licensing authority to consider applications afresh and then grant the licences for sale of toddy in favour of Toddy Tappers Cooperative Society and therefore it is open to the writ petitioner to seek grant of any such licence in terms of the 2007 Rules.

It will be important to notice the disqualifications for securing the grant of any such licence as set out in Sub-Rule(2) of Rule 5 of the 2007 Rules.

5. (1) xxx

(2) Disqualifications :- No Licence shall be granted to Tappers Co-operative society which, or tapper under "Tree for Tappers Scheme who :-

(a) has been convicted of any offences specified in clause (d) of sub section (1) of Section 31 of the Act in respect of which he has been penalized or convicted within the preceding five years;

(b) has been convicted or whose licence has been

cancelled for breach of any of the conditions of licence granted under Section 31 of the Act within the preceding three years;

(c) has been held guilty either in a departmental proceeding or in a court of an offence under Section 37 of the Act for adulteration of toddy by mixing any article injurious to public health or otherwise within the preceding five years.

(d) Is a defaulter of excise revenue;

(e) Is adjudged as an insolvent by a competent court or

(f) Suffering from leprosy or any other contagious disease

Thus, if a society has been held guilty either in a departmental proceeding or in a Court of an offence under Section 37 of the Act for adulteration of toddy within the preceding five years, the same will be a disqualifying factor. Therefore, even if the petitioner submits an application seeking grant of fresh licence, the impugned orders might come in the way of consideration of its application by the licensing authority.

As is noticed supra, the departmental action against the petitioner society has emanated from a check and inspection undertaken by the inspecting officials of the department who caught hold of one individual who has been identified as Gundraj Raman Goud and who has been detected to be selling adulterated toddy. While that part of the fact situation does not pose any difficulty, but, however, the question as to whether the check and inspection carried out by the departmental officials has in fact been undertaken at the licenced premises of the writ petitioner society acquires significance. While granting licences, the identification of the premises has been completely spelt out by the details noted in the licence. But, however,

when the panch witnesses have turned hostile and disowned the statements said to have been made by them and particularly viewed from the angle that they are illiterate persons and they have put their thumb impressions, it is all the more important for the one who carried out the check and inspection to have been examined during the course of enquiry by the Prohibition and Excise Inspector. The absence of the check and raid party officials during the said enquiry has given scope for doubt as to the identity of the premises at which the raid itself took place. Judged from the angle that there is no material to directly connect Gundraj Raman Goud with the society and that he is not a servant or member or an authorized person of the society to undertake sale of toddy, the identification of the premises where sale was undertaken by the said Raman Goud has a significant role to play in the entire matter. I therefore find considerable force in the submission made by the learned counsel for the petitioner Sri Sridhar Reddy that it has not been established beyond all reasonable doubt that the Respondents had not established the exact identity of the place where the adulterated toddy was offered for sale by the said Raman Goud. Its only by an inference drawn against the petitioner society, from the factor of the said Raman Goud producing a Xerox copy of the licence issued in favour of the petitioner society. In my opinion, Xerox copies of the licenced premises perhaps can be easily secured. Very availability of a Xerox copy of the licence of the petitioner society with another individual, would not necessarily lead to the only inference of some relationship between such an individual and the society concerned. I therefore find that a fair and reasonable opportunity has

been denied to the petitioner before a finding of guilt has been recorded against him.

However, in the meantime, the period of licence originally granted upto 31st March, 2007 had expired and even the subsequent temporary extention of the licence period till the new policy is announced by the State had also nearly drawn to a close, therefore no useful purpose would be served by setting aside the impugned orders and remitting the matter back for fresh consideration by making available the officials who participated the check/raid on the relevant date for further examination. In terms of the new policy, licences are liable to be granted taking into account and consideration the factors enumerated therein. I therefore direct the licensing authority to consider the application of the petitioner society for grant of licence without putting the impugned orders, in effect, against the petitioner and thus disqualify him in terms of Rule 5(2)(c) of 2007 Rules. If the application of the petitioner society is in all other respects in conformity with the Rules of 2007, except in respect pointed out supra, it may be considered and appropriate orders be passed. To this extent, the writ petition stands allowed. No costs.

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knk 27.09.2007